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income tax withholding from ... annuities.

§ 841.1006 Additional provisions.

These additional provisions are also binding on the State and OPM:

(a) A request or revocation is effective when processed by OPM. OPM will process each request by the first day of the second month following the month in which it is received, but incurs no liability or indebtedness by its failure to do so.

(b) Any amount deducted from an annuity payment and paid to the State as a result of a request is deemed properly paid, unless the annuity payment itself is cancelled.

(c) OPM will provide the State with the information necessary to properly process a request for State income tax withholding.

(d) If the State is paid withholding which is contrary to the terms of the annuitant's request, the State is liable to the annuitant for the amount improperly withheld, and subject to account verification from OPM, agrees to pay that amount to the annuitant on demand.

(e) In the case of a dispute amount in any of the reports described and authorized by this agreement, the Associate Director will issue an accounting. If the State finds this accounting unacceptable, it may then and only then pursue such remedies as are otherwise available.

(f) If a State received an overpayment of monies properly belonging to the Fund, OPM will offset the overpayment from a future payment due the State. If there are no further payments due the State, OPM will inform the State in writing of the amount due. Within 60 days of the date of receipt of that communication that State will make payment of the amount due.

§ 841.1007 Agreement modification and termination.

This agreement may be modified or terminated in the following manner:

(a) Either party may suggest a modification of non-regulatory provisions of the agreement in writing to the other party. The other party must ... or reject the modification within 60 calendar days of the date of the suggestion.

(b) The agreement may be terminated by either party on 60 calendar days written notice.

(c) OPM may modify this agreement unilaterally through the rule making process described in sections 553, 1103, and 1105 of Title 5, United States Code.

§ 841.1008 Authority to use the Federal Personnel Manual System.

OPM may provide such further rules, procedural instructions, and operational guidance as may be necessary and proper under this Subpart and not inconsistent therewith, in the Federal Personnel Manual System.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

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notice described in paragraph (c) of this section.

(2) The election of an alternative form of annuity cannot be revoked after OPM authorizes any payment pursuant to that election.

(c) OPM will notify each retiring employee or Member of the amounts payable if an alternative form of annuity is elected. The notice will be sent to the employee or Member only after separation from service, and will include instructions for completing the election.

(d) Except as provided in paragraph (e), an annuitant who dies before the time limit prescribed in paragraph (b)(1) of this section is deemed to have made an affirmative election under § 842.703(a) with a reduced annuity to provide a current spouse annuity, regardless of any election completed under § 842.606, and the lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code.

(e) If an annuitant described in paragraph (d) has completed an election under § 842.604 (a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code; and

(2) The election under § 842.604 (a) or (b) will be honored.

§ 842.705 Alternative forms of annuities available.

(a) An employee or Member who is eligible to make an election under § 842.703 may elect to receive his or her lump-sum credit, excluding interest, plus an annuity computed in accordance with sections 8415 and 8421 of title 5, United States Code, for which they qualify (including any reduction for survivor benefits) and reduced under § 842.706.

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapters II and IV of chapter 84 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity.

§ 842.706 Computation of alternative form of annuity.

(a) To compute the beginning rate of annuity payable to a retiree who elects an alternative form of annuity, OPM will first compute the monthly rate of annuity (and annuity supplement, if any), otherwise payable under subchapter II of chapter 84 of title 5, United States Code, including all reductions provided under the subchapter other than those in section 8420a of that title. That monthly rate is then reduced by an amount equal to the retiree's lump-sum credit, excluding interest, divided by the applicable present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate is then rounded to the next lowest dollar and becomes the rate of annuity payable.

(b) OPM will publish a notice in the FEDERAL REGISTER announcing any proposed adjustments in present value factors at least 30 days before the effective date of the adjustments.

Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

AUTHORITY: 5 U.S.C. 1104 and 8461(g).

SOURCE: 52 FR 2069, Jan. 16, 1987, unless otherwise noted.

§ 842.801 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement—

(1) 5 U.S.C. 8412 (d) and (e) and 8414(c), which establish special retirement eligibility for law enforcement officers, firefighters, and air traffic controllers employed under the Federal Employees Retirement System (FERS);

(2) 5 U.S.C. 8422(a)(2)(B), pertaining to deductions;

(3) 5 U.S.C. 8423(a), pertaining to Government contributions; and

(4) 5 U.S.C. 8425, pertaining to mandatory retirement.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8461(g) to prescribe regulations to carry out the provisions of chapter 84 of title 5 of the United States Code and in 5 U.S.C. 1104 to delegate authority for personnel management to the heads of agencies.

§ 842.802 Definitions.

In this subpart—

"Agency head" means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the United States Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment.

"Air traffic controller" means a civilian employee of the Department of Transportation or the Department of Defense in an air traffic control facility or flight service station facility who is actively engaged in the separation and control of air traffic or in providing preflight, inflight, or airport advisory service to aircraft operators, as provided in 5 U.S.C. 2109. Also included in this definition is an employee who supervises any air traffic controller.

"Detention duties" means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10, United States Code). (See 5 U.S.C. 8401(17).)

"Employee" means an employee as defined by 5 U.S.C. 8401(11).

"Firefighter" means an employee occupying a rigorous position, whose primary duties are to perform work directly connected with the control and extinguishment of fires, as provided in 5 U.S.C. 8401(14). Also included in this definition in an employee occupying a rigorous firefighter position who

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moves to a supervisory or administrative position and meets the conditions of § 842.803(b).

"First-level supervisors" are employees classified as supervisors who have direct and regular contact with the employees they supervise. First-level supervisors do *not* have subordinate supervisors. A first-level supervisor may occupy a rigorous position or a secondary position if the appropriate definition is met.

"Frequent direct contact" means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

"Law enforcement officer" means an employee occupying a rigorous position, whose primary duties are the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or the protection of officials of the United States against threats to personal safety, as provided in 5 U.S.C. 8401(17). Also included in this definition is an employee occupying a rigorous law enforcement officer position who moves to a supervisory or administrative position and meets the conditions of § 842.803(b). Except as provided above, the definition does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States.

"Primary duties" means those duties of a position that—

(a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(c) Are assigned on a regular and recurring basis. Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

"Rigorous position" means a position the duties of which are so rigorous that employment opportunities are required to be limited to young and physically vigorous individuals whose primary duties are—

(a) To perform work directly connected with controlling and extinguishing fires; or

(b) Investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States or protecting the personal safety of United States officials.

The condition in this definition that employment opportunities be limited does not apply with respect to an employee who moves directly (i.e., without a break in service exceeding 3 days) from one rigorous law enforcement officer position to another or from one rigorous firefighter position to another.

"Secondary position" means a position that—

(a) Is clearly in the law enforcement or firefighting field;

(b) Is in an organization having a law enforcement or firefighting mission; and

(c) Is either—

(1) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in rigorous positions; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in the law enforcement or firefighting field is a mandatory prerequisite.

§ 842.803 Conditions for coverage.

(a) *Rigorous positions.* An employee's service in a position that has been determined by the employing agency head to be a rigorous position is covered under the provisions of 5 U.S.C. 8412(d). An employee who is not in a rigorous position nor covered while in a secondary position and is detailed to a rigorous position is not covered

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